

1 KAMALA D. HARRIS
Attorney General of California
2 FRANK H. PACOE
Supervising Deputy Attorney General
3 CHAR SACHSON
Deputy Attorney General
4 State Bar No. 161032
455 Golden Gate Avenue, Suite 11000
5 San Francisco, CA 94102-7004
Telephone: (415) 703-5558
6 Facsimile: (415) 703-5480
Attorneys for Complainant

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8 **BEFORE THE**
BOARD OF REGISTERED NURSING
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

Case No. 2013-959

12 **RICHARD WAYNE SMITH**
13 **3573 Summerlinn Drive**
West Linn, OR 97068

ACCUSATION

14 **Registered Nursing License No. 382942**
15 **Public Health Nurse Certification No. 54987**

16 Respondent.

17
18 Complainant alleges:

19 **PARTIES**

20 1. Louise R. Bailey, M.Ed., RN (Complainant) brings this Accusation solely in her
21 official capacity as the Executive Officer of the Board of Registered Nursing, Department of
22 Consumer Affairs.

23 2. On or about March 31, 1985, the Board of Registered Nursing issued Registered
24 Nursing License Number 382942 to Richard Wayne Smith (Respondent). The Registered
25 Nursing License was in full force and effect at all times relevant to the charges brought herein and
26 will expire on May 31, 2014, unless renewed.

27 3. On or about December 15, 1995, the Board of Registered Nursing issued Public
28 Health Nurse Certification Number 54987 to Respondent. The Public Health Nurse Certification

1 was in full force and effect at all times relevant to the charges brought herein and will expire on
2 May 31, 2014, unless renewed.

3 JURISDICTION

4 4. This Accusation is brought before the Board of Registered Nursing (Board),
5 Department of Consumer Affairs, under the authority of the following laws. All section
6 references are to the Business and Professions Code unless otherwise indicated.

7 5. Section 2750 of the Business and Professions Code (Code) provides, in pertinent part,
8 that the Board may discipline any licensee, including a licensee holding a temporary or an
9 inactive license, for any reason provided in Article 3 (commencing with section 2750) of the
10 Nursing Practice Act.

11 6. Section 2764 of the Code provides, in pertinent part, that the expiration of a license
12 shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the
13 licensee or to render a decision imposing discipline on the license.

14 7. Section 118, subdivision (b), of the Code provides that the expiration of a license
15 shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period
16 within which the license may be renewed, restored, reissued or reinstated.

17 STATUTORY PROVISIONS

18 8. Section 2761 of the Code states:

19 "The board may take disciplinary action against a certified or licensed nurse or deny an
20 application for a certificate or license for any of the following:

21 "(a) Unprofessional conduct, which includes, but is not limited to, the following:

22 ...

23 "(4) Denial of licensure, revocation, suspension, restriction, or any other disciplinary
24 action against a health care professional license or certificate by another state or territory of the
25 United States, by any other government agency, or by another California health care professional
26 licensing board. A certified copy of the decision or judgment shall be conclusive evidence of that
27 action.

28 ...

"(f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof.

• • •

9. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.

COST RECOVERY

10. Section 125.3 of the Code provides, in pertinent part, that the Board may request the administrative law judge to direct a licentiate found to have committed a violation or violations of the licensing act to pay a sum not to exceed the reasonable costs of the investigation and enforcement of the case, with failure of the licentiate to comply subjecting the license to not being renewed or reinstated. If a case settles, recovery of investigation and enforcement costs may be included in a stipulated settlement.

FIRST CAUSE FOR DISCIPLINE

(CRIMINAL CONVICTIONS)

11. Respondent is subject to disciplinary action under sections 2761(a), 2761(f), and/or 490 in that on or about January 11, 2001, in a criminal proceeding entitled *The People of the State of California v. Richard Wayne Smith, Jr.* in Mendocino County Superior Court, Case Number SCUJ-CRCR-00-39010-02, Respondent was convicted by his plea of guilty of violating Penal Code section 452(b) (reckless fire of inhabited structure). Respondent was sentenced to 90 days jail time, probation for three years, and ordered to pay fines and fees in the amount of \$1,670.00. The circumstances of the conviction are that on or about August 2, 2000, Respondent set fire to his property in Redwood Valley, California. He burned approximately 1/8 to 1/4 of an acre before fire fighters extinguished the fire. The fire burned several feet of Respondent's neighbor's property. Respondent started the fire with charcoal lighter fluid and matches. When the Deputy

1 Sheriff asked Respondent if starting the fire was the right thing to do, Respondent replied "It was
2 the right thing to do, it protected my house and Redwood Valley."

3 12. Respondent is further subject to disciplinary action under sections 2761(a), 2761(f),
4 and/or 490 in that on or about December 11, 2000, in a criminal proceeding entitled *The People of*
5 *the State of California v. Richard Wayne Smith, Jr.* in Mendocino County Superior Court, Case
6 Number SCUK-CRCR-00-37870-02, Respondent was convicted by his plea of guilty of violating
7 Penal Code section 242 (battery) and Penal Code section 602.5 (unauthorized entry on property).
8 Respondent was sentenced to 262 days jail time. The circumstances of the conviction are that on
9 or about June 3, 2000, Respondent made unwanted sexual advances toward his neighbor,
10 including exposing his erect penis and wiping her cheek with his preseminal fluid.

11 SECOND CAUSE FOR DISCIPLINE

12 (OUT OF STATE DISCIPLINE)

13 13. Respondent is subject to disciplinary action under section 2761(a)(4) in that on or
14 about August 25, 2012, Respondent entered into a Stipulated Order for Reprimand with the
15 Oregon State Board of Nursing. The reprimand was based on a report that between 2003 and
16 2012, while working at Davita Willamette Valley Renal Center, Respondent failed to correctly
17 document administration of antibiotics in the computer system when he checked a box which
18 noted the time the dialysis session began, rather than the actual time the medication was
19 administered to the patient. Respondent acknowledged that the errors created confusion in the
20 patient record regarding whether the patient had received the antibiotic treatment in accordance
21 with facility policy and physician orders. There was no report of patient harm.

22 PRAYER

23 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
24 and that following the hearing, the Board of Registered Nursing issue a decision:

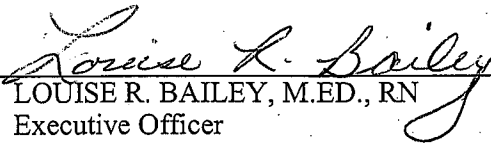
25 1. Revoking or suspending Registered Nursing License Number 382942, issued to
26 Richard Wayne Smith;

27 2. Revoking or suspending Public Health Nurse Certification Number 54987, issued to
28 Richard Wayne Smith;

1 3. Ordering Richard Wayne Smith to pay the Board of Registered Nursing the
2 reasonable costs of the investigation and enforcement of this case, pursuant to Business and
3 Professions Code section 125.3;

4 4. Taking such other and further action as deemed necessary and proper.
5
6

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8 DATED: APRIL 24, 2013


LOUISE R. BAILEY, M.ED., RN
Executive Officer
Board of Registered Nursing
Department of Consumer Affairs
State of California
Complainant

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